

APPEAL BY MR P BROOKS AGAINST THE DECISION OF THE COUNCIL TO REFUSE PLANNING PERMISSION FOR 6 BUNGALOWS ON LAND ADJACENT TO SLACKEN LANE, BUTT LANE

<u>Application Number</u>	13/00266/FUL
<u>LPA's Decision</u>	Refused by Planning Committee 23rd July 2013
<u>Appeal Decision</u>	Appeal allowed, costs claim dismissed
<u>Date of Appeal Decision</u>	23rd October 2014

The full text of the appeal decision is available to view on the Council's website (as an associated document to application 13/00266/FUL) and the following is only a brief summary.

The Inspector concluded that the main issues in this case are the effect of the proposed development on (i) the potential for the supply (quantum) of housing on the adjacent land and (ii) the character and appearance of the area. In allowing the appeal, the Inspector made the following comments:

- Planning permission was granted in 2013 for the erection of four dormer bungalows and one bungalow on the site. This permission has been included in the Council's five-year housing land supply. The current appeal seeks to add a further bungalow on land to the rear of No 17, increasing the number of dwellings proposed on site to six.
- The Council acknowledges it cannot currently demonstrate a 5 year supply of housing land and therefore the housing policies in the development plan cannot be considered to be up-to-date. In this situation the presumption in favour of sustainable development set out in the NPPF means that permission for development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or specific policies in the Framework indicate that development should be restricted.
- The land adjoining the appeal site is identified in the Newcastle-Under-Lyme Strategic Housing Land Availability Assessment (SHLAA) as a potentially developable site, which could contribute towards housing supply for years 6-10 of the plan period. This site, which is 1.9 hectares in size, is referred to as Site 5 in the SHLAA. Together with the adjacent land, Site 5a, the SHLAA indicates that this area, which extends to about 8.10 hectares, could accommodate around 140 dwellings.
- The LPA suggested that the proposed dwelling situated to the rear of No 17 would significantly and demonstrably impact on the future development of the adjoining site, referring to their Space Around Dwellings SPG, in particular separation distances between dwellings and provision of private amenity space. A diagram has also been provided indicating how the appeal development could impact on the adjacent land when applying these guidelines. The Council assert that this introduces an unacceptable loss of privacy between primary windows in neighbouring properties.
- The SPG indicates that only where one or both of the facing dwellings are two storeys in height would a separation distance of 24m be necessary. Therefore, with a single storey dwelling, a guideline distance of 21m rather than 24m would be applicable in this case.
- The Council have suggested that the appeal development could affect up to 0.12 hectares or 6% of SHLAA site 5 when applying SPG guidelines. Even accounting for the diagram and explanation provided in their statement, it is difficult to establish how this figure was arrived at. Nevertheless, the Council suggest that SHLAA sites 5 and 5a have a combined capacity of 140 dwellings. This equates to a density of 17.2 dwellings per hectare. The potential loss of 0.12 hectares of the adjoining site, based on the above figures, taking the worst case scenario would amount to the equivalent of about 2.06 dwellings.
- The Inspector concluded that the area affected could be smaller than the 0.12 hectares suggested by the Council. Therefore the appeal development has the potential to replace any dwellings that might be lost on the adjacent land as a result of granting permission here.

- The SPG only provides guidance for the layout of new development and the guidance is flexible.
- The Inspector concluded that any potential impact on the future supply of housing on the adjacent land would be limited, and not outweigh the benefits of the appeal development, which would contribute towards the Council's 5 year supply of deliverable housing.
- The varied layout and orientation of the appeal scheme would be consistent with the mixed pattern, form and structure of the area.
- The dwelling to the rear of the site would not be cramped into the site as it would benefit from an extensive rear garden and a parking area to the front of the property, increasing the sense of spaciousness. The established landscaping and simple design and limited height of the bungalows would further reduce its impact.
- The Inspector concluded that the appeal development due to its design, form and layout would preserve the character and appearance of the area.
- The Inspector considered that provision towards the Newcastle (urban) Transport and Development Strategy (NTADs) would be necessary to make the development acceptable and would comply with the three tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

Costs Decision

In refusing the application for an award of costs, the Inspector made the following comments:

- The applicant's claim is two-fold. Firstly, that the Council failed to provide evidence to substantiate its reason for refusal, and secondly, the Council demonstrated a predisposition to refuse the application and failure to engage with the applicant during the process.
- The Committee report provides discussion on the merits of the case, identifying harm to both the character and appearance of the area, and in particular the future delivery of housing on the adjacent land.
- The Council appeal statement provides further clarification on these matters, identifying how the scheme could impact on the adjacent site when applying the separation distances in the Space Around Dwellings Supplementary Planning Guidance 2004 (SPG).
- The Inspector was satisfied that the Council has provided sufficient evidence to substantiate its reason for refusal, and unreasonable behaviour has not been demonstrated in this respect.
- It is evident from the various emails and correspondence, and their differing recommendations to committee that officer's views on the merits of the scheme evolved during the application process. This is not an uncommon occurrence, particularly when, as in this case, additional evidence is provided which resolves potential reasons for refusal, or alters the recommendation. As such, officers did not demonstrate a predisposition to refuse the application.
- The appellant suggested that members of the planning committee did not approach the decision making process with an open mind and were looking for reasons to refuse the application, however the Inspector was not provided with full details of events of these meetings and cannot determine whether this was the case. Members are entitled to form their own views on the respective merits of a proposal and the Inspector cannot conclude that members of the planning committee demonstrated a predisposition to refuse the application.
- Although the appellant disagrees with the explanation given for refusing the application, this does not represent a lack of engagement on behalf of the Council. The Inspector therefore found that the Council did fully engage with the appellant and unreasonable behaviour cannot be demonstrated in this regard.
- The Inspector concluded that unreasonable behaviour resulting in unnecessary expense has not been demonstrated and an application for an award of costs should not succeed.

Recommendation

That the decisions be noted.